MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2019/2020 SESSION

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

24 OCTOBER 2019
Reading Time: 2:30PM-2:45PM
(15 Minutes)
Answering Time: 2:45PM-5:45PM
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 5 Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY. PART B to attempt either question 4 (a) or 4 (b).** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

QUESTION 1

(a) Tenaga Nasional Berhad ('TNB') is a supplier of electricity. Malaysian Drones Society ('MDS') is a registered society under the Societies Act 1966 and a registered consumer of TNB having a premise at No. 140, Jalan Berjaya 8/1, Taman Perindustrian Berjaya, 81200 Johor Bahru, Johor ('the premise'). MDS had requested from TNB for the supply of electricity to the premise and the rate of electricity usage would be determined by a tariff fixed by TNB. TNB duly supplied electricity to the premise. On 2.3.2014, TNB conducted an inspection on the electricity meter at the premise whereby TNB discovered that the said meter had been tempered with. This prevented the meter from recording the actual usage of electricity at the premise. Following further probe into the matter, TNB discovered that the said meter was first tempered on 6.7.2013. TNB now contends that it has suffered losses as a result of the tempering of the said meter by MDS for the period of 6.7.2013 to 2.3.2014 in the sum of RM1,364,908.82. TNB wishes to commence an action against MDS to claim for, among others, the said sum of RM1,364,908.82.

Based on the above:

(i) Discuss whether TNB has a cause of action against MDS.

(5 marks)

(ii) Assuming that there is a cause of action, discuss whether TNB's claim against MDS is time barred.

(7 marks)

(iii) Assuming that there is a cause of action, explain how MDS may be named in the action.

(3 marks)

(b) Different forms are provided under O 16 r 1 Rules of Court 2012 to cater for three distinct grounds for third party proceedings.

Discuss.

(5 marks)

Continued..

(c) One Abdul Aziz ('the deceased') died in April 2015. He was the registered owner of a piece of land in Kuala Lumpur which was charged as security to Alias Bank Malaysia Bhd ('ABMB'). In June 2018, ABMB obtained an order for sale of the land by way of public auction because of default of payment by the deceased. The land was successfully auctioned in March 2019, leaving a surplus sum of RM530,956.05 ('the surplus of the auction proceeds'). One Sharifah Aloya and one Abdul Wahab are the administratrix and administrator of the estate of the deceased and the only beneficiaries stated in the grant of letters of administration. Both claimed to be entitled to receive the surplus of the auction proceeds. However, one Abdul Wahub, the younger brother of the deceased, obtained a Syariah Court order dated 14 May 2019 which, inter alia, prohibited Sharifah Aloya and Abdul Wahab from receiving the surplus of the auctions proceeds. Instead the Syariah Court order stated that any surplus from the auction proceeds had to be kept with Amanah Raya Bhd. The conflicting claims of Sharifah Aloya and Abdul Wahab on the one hand and Abdul Wahub on the other hand compelled ABMB to seek legal advice.

As solicitors for ABMB, explain how ABMB may proceed under the Rules of Court 2012 to determine who should rightly receive the surplus auction proceeds.

(5 marks)

(Total: 25 marks)

QUESTION 2

(a) The plaintiff and defendant are brothers. The plaintiff has commenced three different civil suits against the defendant in 2011, 2015 and 2017 respectively. By an Order of the Federal Court dated 29.9.2018, the plaintiff has been declared a vexatious litigant. The Order has been gazetted on 1.3.2019. Notwithstanding the Order, the plaintiff wishes to continue with the civil suits against the defendant.

By applying the law, advise the plaintiff on the following:

(i) The effect of being declared a vexatious litigant.

(5 marks)

(ii) The mode to, and the court where he must, commence for an order that he may continue with the civil suits against the defendant.

(8 marks)

Continued...

(b) The plaintiff had obtained a judgment in default of appearance ('JID') against the defendant. The JID was premised on the basis that the writ of summons ('the Writ') was personally served on the defendant. The defendant contended he was never served with the Writ and only became aware of the JID when he was served with a bankruptcy notice. He then applied to set aside the JID pointing out that the person who had signed acknowledgement of receipt on the copy of the Writ was a person with a different NRIC number from his. The application was dismissed by the High Court but, on appeal, the Court of Appeal upheld the defendant's contention, set aside the JID and remitted the case to the High Court for case management. By that time, the six-month validity period for service of the Writ had expired. At the case management, the Registrar ordered the defendant to file a defence within two weeks.

By applying the law, assess the correctness of the order of the Registrar.

(12 marks)

(Total: 25 marks)

QUESTION 3

(a) Briefly explain the procedure for entering a judgement in default of appearance ('JID').

(3 marks)

(b) "It is axiomatic that if the judgment is regular, then it is an inflexible rule that there must be an affidavit of merits, that is, an affidavit stating facts showing a defence on the merits."

per Raja Azlan Shah in *Bank Bumiputra Malaysia Bhd v Majlis Amanah Ra'ayat* [1979] 1 MLJ 23.

Analyse the principle of law above.

(7 marks)

Continued...

(c) The writ and statement of claim was served on the defendant personally. Having failed to enter an appearance, a judgment in default of appearance ('JID') under O 13 of the Rules of Court 2012 ('ROC') was entered against the defendant. The JID was then served on the defendant by prepaid registered post on 6 August 2019. The defendant denied receiving the JID. On 12 September 2019 the defendant applied under O 42 r 13 of the ROC to set aside the JID. The learned Sessions Court Judge ('SCJ') dismissed the defendant's application on the basis that the application was out of time by six days from 6 September 2019. It is also the finding of the learned SCJ that the defendant had not explained in her affidavit on the delay in making her application to set aside and since there was no application for extension of time the learned SCJ could not consider the merits of the defendant's application. The defendant appealed against the SCJ's decision.

The defendant contended that the writ and statement of claim had not been properly served on her as the documents should have been served on her former lawyers. The defendant claimed that the respondent/plaintiffs lawyers had known of the dispute between the parties much earlier before the filing of the summons and there were letters passing between the defendant's former lawyers and the plaintiff's lawyers. As such the plaintiff's lawyers knew or ought to have known that the defendant was represented by the defendant's previous lawyers, and therefore all cause papers should have been served on the defendant's former lawyers. The defendant argued that there was no proper of service of the writ and statement of claim. The defendant also asserted that the JID should also have been served on the defendant's former lawyers for the same reason. The defendant asserted there must be actual service of the JID on her to constitute receipt and therefore time for setting aside the JID had not commenced. The defendant also argued that she had explained the delay on the application to set aside in her affidavit and that there is a defence on the merits.

Analyse the defendant's appeal on SCJ's decision dismissing the defendant's application to set aside the JID.

(15 marks)

(Total: 25 marks)

Continued...

PART B: ANSWER EITHER QUESTION 4 (a) OR QUESTION 4 (b)

QUESTION 4 (a)

(i) Briefly explain a procedural device for a prompt and expeditious disposition of a case.

(5 marks)

(ii) "It is of course trite law that O14 proceedings are not decided by weighing the two affidavits. It is also trite that the mere assertion in an affidavit of a given situation which is to be the basis of a defence does not, *ipso facto*, provide leave to defend; the Court must look at the whole situation and ask itself whether the defendant has satisfied the Court that there is a fair or reasonable probability of the defendant's having a real or *bona fide* defence."

per Ackner L.J. in *Banque de Paris v de Naray* [1984] 1 Lloyd's Rep 23.

Explain the principle of law of the above.

(8 marks)

(iii) At the request of the defendant, the plaintiff granted financing facilities. The defendant defaulted in payment and the plaintiff commenced the present action demanding from the defendant, payment of the outstanding amounts. The plaintiff then filed the present application for summary judgment of its claim. During the hearing application of Order 14 Rules of Court 2012, defendant contended that there was undue delay in filing the application. The plaintiff claimed that the application was filed after the appearance entered by the defendant. Hence, the plaintiff claimed that there was no inordinate delay on the part of the plaintiff in filing the application.

Explain the requirements and procedure of Order 14 Rules of Court 2012.

(12 marks)

(Total: 25 marks)

Continued...

QUESTION 4 (b)

(i) Briefly explain what summary judgment application is.

(5 marks)

(ii) The plaintiff's claim against the defendant was for a combined sum of RM570,708.49 as at 24 December 2018. This sum was said to be based on two overdraft facilities allegedly granted to the defendant and may be stated as follows:

- an overdraft facility of RM350,000 which was based on a letter of offer dated 26 May 2017 ('the overdraft facility'); and
- a second temporary overdraft of RM100,000 which was allegedly granted to the defendant at his request ('the temporary overdraft facility').

The sum total of both the overdraft facility and the temporary overdraft facility came up to RM450,000. The plaintiff applied for an Order 14 against the defendant after the defendant had filed in his appearance. In the affidavit in reply, the defendant contended that the plaintiff had not furnished any details as to the actual amount allegedly due and owing under each of the overdraft facility and the temporary overdraft facility, and that the plaintiff failed to show how the defendant owed the sum of RM570,708.49 as at 24 December 2018 to the plaintiff.

By applying the requirement and principle of law, assess the application of Order 14 made by the plaintiff.

(20 marks)

(Total: 25 marks)

End of page